In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 490

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

WATSON BROS. TRANSPORTATION CO., INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

1. Although appellee characterizes the question presented by this appeal as "entirely factual" (Motion to Affirm, p. 23), its own statement of facts shows that none of the important facts is in dispute and that the principal issue presented is a legal one. Appellee recognizes (Motion to Affirm, pp. 6-7) that the certificate grant of "general commodity" authority was greater than that which the Commission had found to be required by the public convenience and necessity, namely, authority to

haul dangerous explosives. It argues (Motion to Affirm, pp. 17-20), however, that since the Commission allegedly could have granted the greater authority on the basis of the evidence of record, its action in doing so cannot be deemed inadvertent error but must be treated as an intentional revision of the examiner's findings.

But, as we pointed out in our Jurisdictional Statement (pp. 7-9), the Act permits the Commission to grant only such authority as is found required by the public convenience and necessity, and the Commission found only a need for dangerous-explosives authority. Thus, the purported grant of authority to haul general commodities—which the Commission had not found to be so required—was a nullity. Appellee did not except to the examiner's finding that the public convenience and necessity required only the grant of authority to haul dangerous explosives, nor did it seek judicial review of the order after adoption by the Commission. Plainly, the issuance of a certificate containing greater authority than the Commission found to be justified was an inadvertent error. This case, therefore, squarely presents the legal issue whether the Commission can correct such error without recourse to revocation proceedings under Section 212(a) of the Act.

2. Appellee further argues that the Commission's corrective order was properly set aside because in two respects it revoked authority which

the Commission had properly granted in the original certificate pursuant to its findings of public convenience and necessity. First, it contends (Motion to Affirm, pp. 12-17) that the Commission's finding that the public convenience and necessity required appellee to haul "dangerous explosives" entitled appellee to a certificate authorizing it to haul Class C explosives, and that the corrected certificate improperly revoked that authority by limiting it to Class A and Class B explosives. Second, appellee states (Motion to Affirm, pp. 9-11) that the original certificate correctly granted it authority to serve the four Army installations as "off route points" in connection with its "authorized regular and irregular route operations," and that the corrected certificate revoked that authority, *pro tanto,* by restricting appellee to serving the points in connection with its regular route only.

We disagree with both contentions. But assuming *arguendo* their correctness, at most they would have authorized the court to direct that the corrected certificate be modified so as to permit appellee to haul *explosives* of all classes to and from these off-route points in connection with its irregular operations. Plainly, they do not support the court's action in setting aside the Commission's order in its entirety, a result which permits appellee to haul *general commodities* to such points.

It is therefore respectfully submitted that the

motion to affirm should be denied, and that this Court should note probable jurisdiction.

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